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Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14446 A
THE SUPREME COURT
OF THE STATE OF UTAH

13 JUN 1977

YOUNG UNIVERSITY
Clark Law School

THE STATE OF UTAH,

Plaintiff and Respondent,

vs.

THERON JONES,

Defendant and Appellant.

Case No.
14446

BRIEF OF APPELLANT

An Appeal from the Judgment of the Fourth Judicial District Court,
Hon. Allen B. Sorensen, Judge

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FILED

MAY 10 1976

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

THE STATE OF UTAH,
Plaintiff and
Respondent,

v.

THERON JONES,
Defendant and
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IN THE SUPREME COURT OF
THE STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff and	:	CASE NO. 14446
Respondent,	:	
	:	
v.	:	
	:	
THERON JONES,	:	
	:	
Defendant and	:	
Appellant.	:	

BRIEF OF APPELLANT

NATURE OF CASE

A jury in the Fourth Judicial District Court, before the Honorable Allen B. Sorensen presiding, found the defendant guilty of aggravated assault with the use of a deadly weapon. This is an appeal to reverse the conviction and allow defendant a new trial.

DISPOSITION IN LOWER COURT

A complaint was filed on the 5th day of December, 1975 by Officer Larry Baum charging that the defendant did commit a crime in the third degree on the 4th day of December, 1975 at Utah County, State of Utah; the information stated that he, the said THERON JONES, at the time and place aforesaid, threatened, accompanied by a show of immediate force or violence, to do bodily injury to Jerry Cronin

by use of a deadly weapon, to-wit; a firearm, contrary to the provisions of 76-5-103, Utah Criminal Code. A preliminary hearing was held in the Provo City Court and the defendant was bound over to the District Court where the defendant pled not guilty and demanded a jury trial. Thereupon a trial was held and the defendant was found guilty of aggravated assault, a third degree felony. At the time of sentencing the defendant requested that a pre-sentence investigation and diagnostic mental test be conducted for a period of ninety days. On April 16, 1976 the court sentenced the defendant to a term not to exceed five years in the State Prison and executed the sentence.

RELIEF SOUGHT AGAINST APPEAL

Appellant seeks a reversal of the conviction and sentence of the Fourth Judicial Court.

STATEMENT OF FACTS

Appellant was living in a trailer home located at 1380 West 570 North, Provo, Utah together with his wife, Beverly Jean Jones and their three children. The prosecuting witness, Jerry Gronin, who was attempting to serve papers on the second, third and fourth days of December, 1975, came to the home of appellant and talked to Mrs. Jones on December 2, 1975 but would not identify himself. Mrs. Jones told her husband of his visit. The said prosecuting witness came to the

home on December 3, 1975 but did not attempt to serve any papers, merely driving by the home; the said prosecuting witness came again to the home on December 4, 1975 after dark at approximately 9:15 P.M. At this time he opened the screen door of the home and knocked upon the door; the appellant opened the door, he had a gun in his hand, and demanded what the man wanted. There is conflict of testimony of appellant and prosecuting witness as to whether or not said gun was pointed at the prosecuting witness. Thereupon, appellant asked the prosecuting witness to leave his property and followed said prosecuting witness to see that he did so and also that he might obtain the license number of said prosecuting witness's car in order that he might identify said person. Appellant and his wife were fearful that the prosecuting witness was there to do them harm. Appellant claimed there had been numerous occasions when his property had been disturbed by outside persons which gave them reason to assume the prosecuting witness was there for the same reason. Thereupon the wife of the appellant called the police. Upon leaving the premises the prosecuting witness contacted the Provo City Police, and filed a complaint against the appellant charging him with aggravated assault with a deadly weapon contrary to the provision of 76-6-103 Utah Code Annotated 1953 as amended. After the jury trial was held the appellant was convicted of said charge.

ARGUMENT

THE FOURTH JUDICIAL COURT ERRED IN NOT GRANTING APPELLANT'S

MOTION TO DISMISS AT THE CONCLUSION OF THE STATES CASE
BECAUSE OF INSUFFICIENT EVIDENCE.

No evidence is found in the record to show that the gun was loaded at the time of the incident or that the appellant desired to do any act that would do bodily harm or injury to the prosecuting witness, Jerry Cronin. There is no evidence that the force used by the appellant would produce death or serious bodily injury. The law says assault is an intentional offer or attempt by violence to do injury to the person of another. Said appellant threatened only, but executed no real act.

In State v. Dairs 23 N.C. 127-35-AM Dec 735 the court states:

The law makes allowance, to some extent for angry passions and infirmities of man.

In the present circumstance appellant had ample opportunity to harm the prosecuting witness had that been his desire. He, however, did not do so.

64 CJS Section 94--Defence of Property or Possessions says:

A person may use a reasonable amount of force to defend and protect his property and his possession thereof.

Appellant believed that prosecuting witness was a trespasser and that he had the right to remove said trespasser from his property by using force.

CONCLUSION

The verdict of the jury and the judgment of the court should

be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in cursive script, reading "Paul J. Merrill". The signature is written in dark ink and is positioned above the printed name.

PAUL J. MERRILL
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that on this 5th day of May, 1976 I
mailed, postage prepaid, two copies of the foregoing brief to
Vernon B. Romney, Esquire, Attorney General of the State of
Utah, at The State Capitol Building, Salt Lake City, Utah
84114.



PAUL J. MERRILL